

Report of the Partition Task Force  
to the  
General Statutes Commission

August 25, 2017

The Partition Task Force did not reach a consensus on and does not recommend enactment of the Uniform Partition of Heirs Property Act.

The buyout provision of the Act could be studied, but only if the time periods were considerably shortened.

The votes on the following issues were unanimous.

While looking at the issues the Partition Task Force did identify two issues that should be referred to the Revenue Laws Study Committee:

1. If properly worded, partitions by sale could be treated as nontaxable exchanges similar to exchanges under Section 1031 of the Internal Revenue Code. This can be accomplished under State taxation law.

2. Provide that any tenant in common may request the property tax bill be sent concurrently either electronically or by mail, provided that a mailing address or an email address is given to the revenue collector. Property tax bills typically are sent to no more than one person. Tenants in common who are not sent the bill may be uninformed and this may result in a power grab or property grab by the one to whom bills are sent.

Other reforms to make the process more transparent, efficient, and fair:

3. Authorize the clerk to issue a writ of possession at the end of a partition in kind. The Administrative Office of the Courts takes the position that the clerk has no authority to do so but requires a follow-up District Court action to that effect. In the partition statutes in the 1770s,

there was explicit authority for the court to issue a writ of possession.

4. In a partition by sale of residential property, authorize the clerk to order that the occupants of the house must allow the commissioners, real estate agents, surveyors, appraisers, inspectors, as the clerk deems appropriate, to have the reasonable opportunity, on notice, to inspect and show the residence to prospective buyers and/or to evaluate the property and/or to prepare it for sale.

5. In both partitions in kind and by sale, provide that the spouses of heirs are not required to be made parties. Amend the laws on dissent from a will or intestacy to provide that such property cannot be included in the elective share.

6. Statutory presumption that attorneys' fees incurred for the common benefit of the heirs should be awarded, with the amounts in the discretion of the clerk. Attorneys' fees incurred specifically to oppose other tenants in common with respect to whether there should be partition in kind or by sale should not be awarded against the party opposing, but only chargeable to the clients of the attorney and those tenants in common aligned in interest with those clients. (Second sentence has pros and cons.)

7. Clarify that cotenants should be reimbursed for property taxes paid by them during the 10 years preceding the filing of a petition, at the legal rate of interest.

8. Codify, but do not change, current case law on "ouster" of a cotenant.

9. Clarify that in the case of a tenant in common who has occupied the land, the cotenant does not have to pay rent, but imputed rent would be an offset against carrying costs paid by the occupying tenant such as taxes, homeowner's insurance, reasonable repairs, and mortgage payments for loans to acquire or improve the property. These carrying costs should be reimbursable to the cotenant who has paid them. Clarify the right of contribution and provide a

simplified method for a tenant in common to assert such rights.

10. Explore whether partition statutes should allow partition by allotment.

11. To another docket of the General Statutes Commission the question should be referred of service of process on unknown or unlocatable heirs. Should the sale proceeds of these heirs be sent directly to the Escheat Fund rather than held in the clerk's office? Due process should be observed but distinctions made based on the relative value of the property. If the share of a cotenant is less than a small amount of the tax value, say \$1,000.00, alternative means of notice should be explored. Research the question whether electronic notice on a statewide searchable database should be allowed rather than newspaper publication. These issues affect more than partition proceedings.

12. Ask the Real Property Section of the NC Bar Association to prepare optional suggested short forms of tenancy in common agreements that clerks of court and legal aid clinics could have available for tenants in common who acquire their interest, whether by will or intestacy.

13. Ask the Commissioner of Agriculture and the North Carolina Association of Assessing Officers the question whether there should be an outreach program to notify property owners who probably qualify for deferred forestry use for tracts of land, where more than 20 contiguous acres are apparently in forest use.

14. Clarify that in a partition by sale the clerk is not required to appoint more than one commissioner.

Both the majority and those who dissent may submit additional materials to the General Statutes Commission.